#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 14181US02)

In the Application of:

Examiner: Phuc H. Tran

Ed Frank et al.

Group Art Unit: 2471

Serial No.: 10/658,578

Confirmation No.: 3394

system August 23, 2010.

Filed: September 9, 2003

For: METHOD AND SYSTEM FOR

PROVIDING BANDWIDTH ALLOCATION

Transmitted via the Office electronic filing

AND SHARING IN A HYBRID

WIRED/WIRELESS NETWORK

APPLICATION FOR RECONSIDERATION OF THE **DETERMINATION OF PATENT TERM ADJUSTMENT** UNDER 35 U.S.C. 154(b) ACCOMPANYING THE NOTICE OF ALLOWANCE (37 CFR § 1.705)

Commissioner for Patents P.O. Box 1450 Alexandria VA 22313-1450

Sir:

The Applicant respectfully requests reconsideration of the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b) (PTOL-85) accompanying the Notice of Allowance mailed July 9, 2010 ("the Decision"), to the extent indicated in the following discussion and the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR. This application for reconsideration of the Decision is being filed after the date of mailing of the Notice of Allowance and no later than the payment of the issue fee.

This application for reconsideration of the Decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the Decision includes below a statement of the facts involved in sufficient detail to allow the United States Patent and Trademark Office (USPTO) to reach the correct patent term adjustment respecting the disputed items.

The Applicant's calculation shows that the correct patent term adjustment should be 2261 days.

The bases under § 1.702 for the adjustment are as follows.

#### **Positive Patent Term Adjustment**

# Three Year Guarantee (35 USC § 154(b)(1)(B))

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 0 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 1592 days, minus 0 days consumed by an appeal, for a net adjustment of 1592 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was September 9, 2003,
- the third anniversary of the actual filing date was September 9, 2006.
- the USPTO projected in the DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 USC 154(b) that the patent will issue on the first Tuesday preceding the 28th week after July 9, 2010 (the mailing date of the Determination of Patent Term Adjustment under 35 USC 154(b)), which results in a predicted patent issue date of January 18, 2011,
- the predicted patent issue date stated in the last point will be 1592 days after the third anniversary of the actual filing date, which is the appropriate patent term adjustment.

### **Reductions in Patent Term Adjustment**

#### **Removing Overlap**

• Two or more grounds of delay overlap from September 9, 2006, to April 20, 2007, totaling 223 days of delay.

This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR.

## Three Months to Respond to Office actions (37 CFR § 1.704(b))

The Applicant is contesting the following application(s) of 37 CFR § 1.704(b) to reduce the patent term adjustment in the present application.

### Period from January 5, 2008, to January 7, 2008

- The pertinent Office action was mailed on October 5, 2007,
- The date three months after the mailing date of the Office action is Saturday, January 5, 2008,
- The response to the Office action was filed on Monday, January 7, 2008,
- The reduction in the patent term adjustment proposed by the USPTO is 2 days,
- The Applicant's position is that the present Office action response filed on the first business day after a deadline falling on a weekend or holiday is not late, establishing the correct reduction in patent term adjustment is 0 days. The basis for this position is 37 CFR § 1.6(a)(1), which states in relevant part, "The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia," and 37 CFR § 1.7(a), which states in relevant part: "When the day, or the last day fixed by statute or by or under this

part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday." In this case, 37 CFR § 1.7(a) is applicable because the last day set by statute (35 USC § 154(b)(2)(C)(ii)) for taking the action of filing a response to an Office action without being "deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application," falls on a Saturday, Sunday, or on a Federal holiday within the District of Columbia.

### **Net Patent Term Adjustment**

The changes requested by the Applicant to the USPTO patent term adjustment determination in the Decision are as follows:

# Three Year Guarantee (35 USC § 154(b)(1)(B))

	Patent Term Adjustment (days)
USPTO Calculation	0
Applicant Calculation	1592

## **Reductions in Patent Term Adjustment**

## • Removing Overlap

	Patent Term Adjustment (days)
USPTO Calculation	0
Applicant Calculation	223

## Three Months to Respond to Office actions (37 CFR § 1.704(b))

	Patent Term Adjustment (days)
USPTO Calculation	2
Applicant Calculation	0

#### Conclusion

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the patent term adjustment proposed by the Applicant is thus 2261 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Date: August 23, 2010

By: /Hopeton S. Walker/
Hopeton S. Walker
Reg. No. 64,808
Attorney for Applicant

McANDREWS, HELD & MALLOY, LTD. 500 West Madison Street Chicago, Illinois 60661 Telephone: (312) 775-8000

PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No.	10/658,578	Docket No. 14 PTO Calculation	14181US02 on	Applicant Calculation
DATE	EVENT	PTO Delay	Appl. Delay	PTO Delay Appl. Delay
Tuesday, January 18, 2011	Projected issue date			1592,00
Friday, July 09, 2010	Mail Notice of Allowance			
Wednesday, July 07, 2010	Document Verification			
	Notice of Allowance Data			
Wednesday, July 07, 2010	Verification Completed			STATE CONTROL OF THE
Wednesday July 07 2010	Case Docketed to Examiner			
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Tuesday, July 06, 2010	Communication	·		
	Date Forwarded to			
Friday, April 30, 2010	Examiner			
	Response after Non-Final		-	
Wednesday, April 21, 2010	Action			
Monday, February 01, 2010	Mail Non-Final Rejection			
Monday, February 01, 2010	Non-Final Rejection			
	Date Forwarded to			
Saturday, November 21, 2009	Examiner			
	Response after Non-Final			
Tuesday, November 03, 2009	Action			
	Case Docketed to Examiner			
Thursday, October 08, 2009	in GAU			
Wednesday, August 05, 2009	Mail Non-Final Rejection			
Monday, August 03, 2009	Non-Final Rejection			
	Date Forwarded to			
Thursday, May 28, 2009	Examiner			
	Response after Non-Final			
Friday, April 10, 2009	Action			
Wednesday, January 21, 2009	Mail Non-Final Rejection			

Wednesday, January 21, 2009	Non-Final Rejection	
	Date Forwarded to	
Thursday, December 04, 2008	Examiner	
	Amendment after Final	
Tuesday, December 02, 2008	Rejection	
	Mail Final Rejection (PTOL -	\$4117 P
Thursday, October 16, 2008	326)	
Tuesday, October 14, 2008	Final Rejection	
	Case Docketed to Examiner	
Monday, October 06, 2008	in GAU	
	Date Forwarded to	
Monday, July 28, 2008	Examiner	
	New or Additional Drawing	
Thursday, June 26, 2008	Filed	
	Response after Non-Final	Volume 1 - 12 - 12 - 12 - 12 - 12 - 12 - 12 -
Thursday, June 26, 2008	Action	
Wednesday, March 26, 2008	Mail Non-Final Rejection	
Friday, March 21, 2008	Non-Final Rejection	
	Date Forwarded to	
Monday, January 28, 2008	Examiner	
	Response after Non-Final	
Monday, January 07, 2008	Action	7
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Saturday, January 05, 2008	action	
Friday, October 05, 2007	Mail Non-Final Rejection	<b>4</b>
Monday, October 01, 2007	Non-Final Rejection	
	Date Forwarded to	
Friday, July 20, 2007	Examiner	
	Response after Non-Final	
Thursday, July 19, 2007	Action	
Friday, April 20, 2007	Mail Non-Final Rejection   892	892.00
Monday, April 16, 2007	Non-Final Rejection	T-223.00

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	Friday, May 27, 2005	Statement (IDS) Filed	
		Information Disclosure	
	Friday, May 27, 2005	Statement (IDS) Filed	
		Miscellaneous Incoming	
	Friday, April 01, 2005	Letter	
		14 month date	
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	Tuesday, July 06, 2004	Tech Center Complete	
		Case Docketed to Examiner	
	Tuesday, July 06, 2004	in GAU	
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Thursday, December 04, 2003	Application Return TO OIPE				······································	
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Thursday, December 04, 2003	Complete					
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Wednesday, December 03, 2003	OIPE				<del></del>	
Friday, November 21, 2003	Cleared by OIPE CSR	4		<b>*</b>		
	IFW Scan & PACR Auto	4		*		
Thursday, October 16, 2003	Security Review				<del></del>	
Tuesday, September 09, 2003	Initial Exam Team nn	4		<b>*</b>		
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Patent Term	Adjustments			
Patent Term A	djustment (PTA) for	Application Num	ber: 10/658,578	
Filing or 371(d	:) Date:	09-09-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of	Patent:	-	Three Years:	-
Pre-Issue Peti	tions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Pet	itions (days):	-	Total PTA (days):	890
USPTO Adjust	ment(days):	-	Explanation Of Calculations	
Patent Term	Adjustment Hi	story		
Date	Contents Descri	ption	PTO(Days)	APPL(Days)
07-09-2010	Mail Notice of Allo	wance		
07-07-2010	Document Verifica	ntion		
07-07-2010	Notice of Allowand	ce Data Verificatio	on Completed	
07-07-2010	Case Docketed to	Examiner in GAU	l	
07-06-2010	Examiner's Amen	dment Communic	ation	
04-30-2010	Date Forwarded to	Examiner		
04-21-2010	Response after No	n-Final Action		
02-01-2010	Mail Non-Final Reg	jection		
02-01-2010	Non-Final Rejection	on		
11-21-2009	Date Forwarded to	Examiner		
11-03-2009	Response after No	n-Final Action		
10-08-2009	Case Docketed to	Examiner in GAU		
08-05-2009	Mail Non-Final Rej	ection		
08-03-2009	Non-Final Rejection	on		
05-28-2009	Date Forwarded to	Examiner		
04-10-2009	Response after No	n-Final Action		
01-21-2009	Mail Non-Final Rej	iection		
01-21-2009	Non-Final Rejection	on		
12-04-2008	Date Forwarded to	Examiner		
12-02-2008	Amendment after	Final Rejection		
10-16-2008	Mail Final Rejection	n (PTOL - 326)		
10-14-2008	Final Rejection			
10-06-2008	Case Docketed to	Examiner in GAU		
06-26-2008	New or Additional	<del>-</del>		
07-28-2008	Date Forwarded to	Examiner		
06-26-2008	Response after No	n-Final Action		
03-26-2008	Mail Non-Final Rej	ection		
03-21-2008	Non-Final Rejection	n		
01-28-2008	Date Forwarded to	Examiner		
01-07-2008	Response after No	n-Final Action		2
10-05-2007	Mail Non-Final Rej	ection		1

10-01-2007	Non-Final Rejection	
07-20-2007	Date Forwarded to Examiner	
07-19-2007	Response after Non-Final Action	
04-20-2007	Mail Non-Final Rejection	892
04-16-2007	Non-Final Rejection	<b>^</b>
05-27-2005	Information Disclosure Statement considered	<b>a</b>
03-22-2006	Information Disclosure Statement considered	會
03-21-2007	Case Docketed to Examiner in GAU	食
01-18-2007	Case Docketed to Examiner in GAU	<b>1</b>
03-29-2006	Reference capture on IDS	4
03-22-2006	Information Disclosure Statement (IDS) Filed	<b>û</b>
03-22-2006	Information Disclosure Statement (IDS) Filed	4
03-21-2006	Case Docketed to Examiner in GAU	<b>^</b>
01-27-2006	Case Docketed to Examiner in GAU	<b>^</b>
04-01-2005	Miscellaneous Incoming Letter	*
05-27-2005	Reference capture on IDS	<b>^</b>
05-27-2005	Information Disclosure Statement (IDS) Filed	4
05-27-2005	Information Disclosure Statement (IDS) Filed	1
07-06-2004	IFW TSS Processing by Tech Center Complete	<b>^</b>
07-06-2004	Case Docketed to Examiner in GAU	1
12-04-2003	Application Return from OIPE	<b>1</b>
12-04-2003	Application Return TO OIPE	<b>\$</b>
12-03-2003	Application Dispatched from OIPE	1
12-04-2003	Application Is Now Complete	<b>1</b>
11-21-2003	Cleared by OIPE CSR	1
10-16-2003	IFW Scan & PACR Auto Security Review	1
09-09-2003	Initial Exam Team nn	<b>^</b>

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